IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.593 OF 2005

IN

SUIT NO.220 OF 2005

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Farooq M. Patel ...Plaintiff

v/s.

M/s.Ray Estate & Ors. ...Defendants

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Mr.R.D.Dave i/b N.N.Vaishnawa & Co. for the Plaintiff.

Mr.D.F.Sharma for the Defendants.

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CORAM: D.K.DESHMUKH, J.

DATED: 18TH MARCH,2006

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed a suit claiming a decree of declaration that the Plaintiff is the owner of the suit property and that the sale deed executed in favour of the Defendant No.3 is sham and bogus. The Plaintiff is also claiming a decree of declaration that the Defendant No.3 has no right, title or interest in the property.

2. Admitted position is that the original owner of the property is Defendant No.8 Mrs.Bai Hanifabai Noor Mohamed Surya. Second admitted position is that she herself by a registered sale-deed dated 4-8-2000 transferred the property to one Mr. Sohail and that Sohail further transferred the property in favour of Defendant No.3 Nasreen Ara Anwar Mozawalla. According to the Plaintiff, Hanifabai had executed a power of attorney in favour of one Abdul Mazid Aziz, who transferred the said property in favour of the

Plaintiff by sale deed dated 20th July, 2001. According to the Plaintiff, because Hanifabai had in the year 1999 entered into an agreement to sell the property to the Plaintiff, she could not have transferred the property to Sohail and thereafter Sohail to the Defendant No.3.

3. From narration of the admitted facts, it is clear that Hanifabai, whose power of attorney holder according to the Plaintiff transferred the title in the property to the Plaintiff on 20th July, 2001, had ceased to have any interest in the property on 4-8-2000 and therefore, she or her power of attorney holder was incapable of transferring any interest in the property to the Plaintiff. Therefore, the Plaintiff by virtue of the document dated 20th July, 2001 could not have transferred any title in the property to the Plaintiff. That the original title document was handed over by Hanifabai to the Plaintiff in 1999 when agreement to sell was entered into, in my opinion, is of no consequence. The Plaintiff obviously does not have any prima facie case. Therefore, the Plaintiff is not entitled to any interim order. Motion is, therefore, disposed of.

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